IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 20381 of 2006
Date of Decision: December 21,2006

Haryana Medical Representatives Association
.....Petitioner

Versus

State of Haryana and four others .....Respondents

Coram: Hon'ble Mr.Justice S.S.Nijjar
Hon'ble Mr. Justice S.S.Saron

Present: Mr.K.S. Jetley, Advocate for the petitioner.

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The Haryana Medical Representatives Association (`Association' for short) is aggrieved against the action of the respondents in not sending the demand notice dated 22.9.2005 (Annexure P2) of one Manish Bhalla to the Labour Court for adjudication. Consequently, it seeks the quashing of order dated 19.10.2006 (Annexure P1) declining to refer the dispute in terms of the aforesaid demand notice to the Labour Court.

The Association is registered under the Trade Union Act and is stated to be competent to invoke the writ jurisdiction of this Court. One Manish Bhalla, who is stated to be a `workman' is a sales-promotional employee of M/s Baxter (India) Pvt. Ltd. (respondent Nos. 4 and 5) and a bona fide member of the petitioner's Association. He was initially appointed as medical representative with M/s Wockhardt in the year 1990 and was confirmed with effect from 10.11.1991. In 1996, he was given more area for promoting sales of the products of M/s Wockhardt. His

designation was changed from medical representative to Territory Manager though the nature of job remained the same except the covering area. M/s Wockhardt was purchased by M/s Baxter (India) Pvt. Ltd. (respondent Nos. 4 and 5) and all employees of the earlier management were adjusted by respondent Nos. 4 and 5 at the same position. It is alleged that the aforesaid Manish Bhalla-workman was summoned at the Delhi Office on 21.9.2005 and was asked to go to Chennai, Calcutta or Ahmedabad on transfer or face termination. As he declined to comply with the illegal demands, he was given a weeks' time to think over the matter and threatened for forced termination from service in case of refusal. For the said reasons, the petitioner-Association espoused the cause of the workman and submitted demand notice by 22.9.2005 (Annexure P2) to the company (respondent Nos. 4 and 5) with copies to the Labour-cum-Conciliation Officer,Ambala. Vide letter dated 21.9.2005 (Annexure P3) the workman was transferred to Ahmedabad as Territory Manager with effect from 3.10.2005. On account of the said transfer another demand notice dated 29.10.2005 (Annexure P4) was served by the petitioner Association on respondent Nos. 4 and 5 with copies to the Labour-cum-Conciliation Officer, Ambala. Respondent No.1 after deliberations and failure of the conciliation proceedings issued the impugned letter dated 19.10.2006(Annexure P1) which is to the effect that the Government has found the demand notice unfit for reference to the Labour Court as Manish Bhalla is working on the post of Manager and, therefore, is not covered within the definition of `workman' in terms of Section 2(s) of the Industrial Disputes Act , 1947 (`Act' for short). Accordingly, the demand notice has been cancelled. The said order is

impugned in this petition.

We have heard the learned counsel for the petitioner and perused the paper book.

Learned counsel for the petitioner has primarily contended that, in fact, Manish Bhalla is a workman within the meaning of Section 2(s) of the Act and that the action of the respondent No.1 in not forwarding the dispute raised by the petitioner Association for adjudication to the Labour Court in terms of Section 10(1)(c) of the Act is clearly misconceived. It is submitted the petitioner Association was not given an opportunity by the Labour authorities to rebut the stand taken by the respondents No.4 and 5. In any case, it is submitted that Manish Bhalla the workman has been wrongly given the designation of Territory Manager. In fact, he is for all intents and purposes a workman.

After giving our thoughtful consideration to the matter, we find no merit in the contentions as raised by the learned counsel for the petitioner.

It is admitted position that the designation of the petitioner is that of Territory Manager and he is, therefore, working in a managerial capacity. Besides, Manish Bhalla has merely been transferred to Ahmedbad and it is not shown whether the transfer to Ahmedbad has resulted in any violation of the conditions of his service or violated the terms and conditions of his appointment. Even otherwise, the petitioner Association has not placed on record the appointment letter of Manish Bhalla with M/s Wockhardt Ltd from which the nature of the job could be ascertained. The fact that Manish Bhalla is working as a Territory Manager he cannot be said to be a `workman' within the meaning of Sction 2(s) of the Act. The

reference made by the learned counsel for the petitioner to the job description of a Territorial Manager is also of no consequence. In fact, the learned counsel has been unable to show that Manish Bhalla is not employed mainly in a managerial capacity, in which case he may have been taken to be a `workman' within the meaning of Section 2(s) of the Act.

In these circumstances, we are unable to interfere with the impugned order dated 19.10.2006, Annexure P1 holding that Manish Bhalla is working on the post of Manager and, therefore, not covered within the definition of `workman' in terms of Section 2(s) of the Act.

Consequently, there is no merit in this petition and the same is accordingly, dismissed.

(S.S.Nijjar)
Judge

(S.S.Saron)
Judge

December 21, 2006

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